

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
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Modernization of Media Regulation)	MB Docket No. 17-105
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To: The Commission

COMMENTS

KVMD Licensee Co., LLC (“KVMD”), the licensee of Digital Television Station KVMD(TV), Twentynine Palms, California (the “Station”), by its attorneys, hereby submits these comments in response to the Commission’s recently issued Public Notice announcing a review of the Commission’s media rules in order to identify provisions that are “outdated, unnecessary or unduly burdensome.” *Commission Launches Modernization of Media Regulation Initiative*, Public Notice, FCC 17-58 (rel. May 18, 2017). KVMD believes that the community of license signal coverage requirement for television stations, set forth in Section 73.625 of the Commission’s Rules, 47 CFR § 73.625, is one such outdated rule that should be modified or eliminated, particularly in the case of urban markets. In support thereof, KVMD states as follows.

Chairman Pai defined the Commission’s objective in launching the Media Regulation Initiative as follows: “we want to figure out whether and how to update our rules to match the realities of today’s marketplace... We want to modernize our rules in order to better promote the public interest and clear a path for more competition, innovation, and investment in the media sector.” KVMD submits that Section 73.625 of the Commission’s Rules is rooted in an old

vision of localism that is out of step not only with changes in broadcast television viewership but with broader technological and environmental changes as well, as most recently evidenced the incentive auction that the Commission has been conducting. The localism model that identifies one television station with one discrete local community, assigning rights and obligations exclusively on the basis of that privileged relationship, fails to account for the economic and technical realities of the modern media marketplace, particularly in urban markets. The localism of Section 73.625 is not the localism of 2017, in which broadcast television competes with multiple video platforms (the Internet, mobile, cable, satellite) and local, regional, and national content are in many cases (and often instantaneously, through mobile and the Internet) interchangeable. Section 73.625's coverage requirements do not reflect contemporary programming and viewership patterns or that viewers' interests tend to be focused on their market area and not just their city or town, nor do they permit sensible technical solutions to the scarcity of transmitter sites in urban areas. It makes sound economic and environmental sense to concentrate broadcaster operations on common tower sites in large, densely-populated markets, but the outmoded community coverage requirements can prohibit the use of such sites for stations located on the periphery of such markets. The Commission should facilitate the use of antenna farms and other common transmitter sites by repealing or modifying the requirement to place a signal of designated strength over a station's community of license in urban markets.

There is nothing uniquely sacrosanct about Section 73.625 of the Commission's Rules, or, for that matter, Section 307(b) of the Communications Act. These provisions enact principles that exist in the lawful media universe alongside other principles, none of them absolute, each relative one to the other, and each assuming a different shape in different environments. For example, through the recent incentive auction, Congress and the Commission actively

encouraged broadcasters to abandon service to their communities altogether, without any requirement that local service be considered or maintained into the future. Further, the Commission allowed television stations willing to return their spectrum and then enter into channel sharing arrangements to change their communities of license, often at substantial distances, in order to facilitate and encourage participation in the incentive auction process. In allowing changes to community of license in the incentive auction channel sharing context, the Commission cited operational limits on broadcasters' ability to participate in channel sharing arrangements without the flexibility to change communities of license: "as a practical matter a broadcaster's ability to find a channel sharing partner would be severely constrained under [an absolute prohibition on changes in communities of license]." *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567 (2014), ¶ 375. The Commission noted that such constraints were particularly binding in and around large markets. *See id.*

Because such community of license limitations threatened to inhibit broadcaster participation in the auction, the Commission removed them, invoking both the Spectrum Act and the Communications Act as authority:

Neither the Spectrum Act nor the Communications Act require us to restrict community of license changes in the channel sharing context... Allowing a community of license change likely will help facilitate channel sharing arrangements, thus facilitating broadcaster auction participation... This approach may result in service loss in some areas, but the public interest benefits that will stem from maximizing broadcasters' participation in the reverse auction through channel sharing outweigh the detriment of potential service losses.

Id. at ¶¶ 375-76. Post-auction, many broadcasters face similar operational constraints, particularly in large urban markets. The same technical barriers, competitive conditions, and

economic pressures that informed Commission policy during the incentive auction process also apply today to broadcasters' efforts to provide market-wide local service – the only circumstance that has changed is that wireless technology and wireless interests are no implicated through spectrum repurposing.

Pulling the teeth from community of license limitations in one situation and not the other is troubling and disconcerting from the broadcaster perspective and lacks a logical basis. To do so suggests that localism is a second-class principle that can be set aside to accommodate wireless interests or raising funds from auctions, and that broadcast itself is a second-class industry that must content itself with second-class services. Instead of this implicit write-off, the Commission should assist broadcasters in reimagining and reinvigorating localism to compete with wireless, mobile, cable and other programming services and technologies. KVMD is not suggesting that the Commission do away with the important part of localism, which sets broadcasters apart from other media.¹ Instead, KVMD is requesting flexibility with respect to the signal coverage requirement in Section 73.625 of the Commission's Rules, through either repeal or modification of the rule in favor of a more realistic policy. Such a policy could call for localism to be achieved either by service through other forms of licensed broadcast service (an

¹ In its recent Channel Sharing Order, the Commission explained its decision to prohibit post-auction community of license changes by new channel sharees as follows: "Precluding full power share stations from changing their communities of license absent an amendment to the DTV Table advances our interest in the provision of services to local communities. While our goal is to accommodate channel sharing, we also seek to ensure that stations continue to provide service to their communities of license and to avoid situations in which stations abandon their communities in order to relocate to more populated markets." *Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context et al.*, MB Docket No. 15-137 et al., Report and Order, 32 FCC Rcd 2637 (2017), ¶ 44. KVMD submits that the Commission can deter such blatant abuse through existing community of license provisions without precluding reasonable solutions to legitimate service issues and environmental concerns in large urban markets. KVMD believes that rigid application of Section 73.625's signal coverage requirements sacrifices technical and environmental service improvements to a notion of localism unsupported by contemporary facts.

LPTV station or a multicast service) or by redefining localism from the community of license to a broader area, which the FCC has considered in matters such as wide-area FM radio service.

Indeed, outside of and prior to the auction context, the Commission has modified its 307(b) analyses to promote countervailing public interest concerns. In particular, during the DTV Transition, the Commission endorsed the use of antenna farms and common transmitter sites to accommodate television stations in challenging markets where transmitter sites were limited, such as Southern California. *See KCRA License Corp.*, 15 FCC Rcd 1794 (1999). The Commission recognized that television service is often area-wide or regional in nature rather than community-specific, and that, accordingly, a narrow focus on communities of license does not reflect the true on-the-ground decisions and concerns facing broadcasters, or the actual preferences and experience of television viewers. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 331 (D.C. Cir. 1951); *Bessemer and Tuscaloosa, Alabama*, 11 FCC Rcd 2967, 2968-2969 (1996).²

Market-level operations, as opposed to narrow community-focused ones, are unavoidable where transmitter sites are scarce – in large, urban areas – and where practical reality and environmental policy argue in favor common transmitter sites and antenna farms. Further, antenna farms and common antenna sites present savings to broadcasters that don't have to maintain their own transmitter sites and broadcasters can then use those savings for programming and other public service purposes. Finally, antenna towers present land use

² In the *Bessemer and Tuscaloosa, Alabama* case, (*id.*) the Commission reasoned:

In *Community of License*, we specifically recognized that we apply our television priorities in a somewhat broader fashion than our FM priorities because *television is a regional service*....In implementing this policy, we are more inclined to define service, for Section 307(b) purposes in terms of coverage and not in terms of artificial political boundaries (footnote omitted and emphasis added) .

concerns as communities find towers affect their viewsheds and limit the locations where new or modified towers can be constructed. This is especially so for television broadcasters that require taller and more expensive towers that do not appeal to many who view towers as aesthetically offensive.

Market-level considerations are no less critical in the case of broadcast programming and viewership, particularly in areas where the economy and culture of outlying communities are influenced by and dependent upon large neighboring metropolises. Localism matters, and broadcast television still has the edge in local content, but the shape of that content is not impervious to the availability of multiple video platforms (cable, satellite, the internet, mobile) and the increasing (and increasingly instant) overlap of local, regional, and national concerns, few of which implicate the concept of localism in any respect. Broadcasters themselves are not impervious to these changes and the competitive pressures they bring to bear upon the broadcast industry.

Chairman Pai got it right when he praised the timeless values of broadcast television: “the biggest reason I’m bullish about [broadcast television] is that broadcasting’s strengths – its values – are timeless. I’m talking about localism, diversity, and public service.” *FCC Chairman Offers Refreshing Approach for Broadcasters*, Dave Arland, Indiana Broadcasters Association, <https://www.indianabroadcasters.org/iba-news/fcc-chairman-offers-refreshing-approach-for-broadcasters-dave-arland-indiana-broadcasters-association/> (last visited June 27, 2017).

However timeless, broadcast values still need to be updated in order to meet the challenges of the day. The Media Regulation Initiative is an opportunity to give broadcasters the tools and the flexibility they need to compete in the modern media marketplace. One means to do so, is to

allow broadcasters to better serve their local communities by the programming they carry and not the signal delivery that they offer.

WHEREFORE, for the foregoing reasons, KVMD Licensee Co., LLC, respectfully requests that the Commission modify or eliminate the community of license signal coverage requirement for broadcast television stations set forth in Section 73.625 of the Commission's Rules.

Respectfully submitted,

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